* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : April 17, 2007
Date of Decision : May 18, 2007

\+ WRIT PETITION (CIVIL) 1914/2004

VAAS EXPORTS ..... PETITIONERS
Through : Mr. P.Sureshan, Advocate

versus

UNION OF INDIA & ANR. .... RESPONDENTS
Through: Mr. A. Sharan, ASG with Mr. P.L. Chopra, Advocate for FCI.
Ms. Monica Garg, Advocate for UOI.
Ms. Geetanjali Mohan with Mr. Ashish Mohan, Advocate for R-3.

2.+ WRIT PETITION (CIVIL) 3606/2004

ALL INDIA CHAMBER OF COMMERCE .... PETITIONERS
Through : Mr. P.Sureshan, Advocate

versus

UNION OF INDIA & ANR. .... RESPONDENTS
Through: Mr. A. Sharan, ASG with Mr. P.L. Chopra, Advocate for FCI.
Ms. Monica Garg, Advocate for UOI.
Ms. Geetanjali Mohan with Mr. Ashish Mohan, Advocate for R-3.

3. + WRIT PETITION (CIVIL) 5740/2004

ALL INDIA GRAIN EXPORTERS ASSOCIATION .... PETITIONER
Through : Mr. Mark D' Souza, Advocate

versus

UNION OF INDIA & ANR. .... RESPONDENTS
Through: Mr. A. Sharan, ASG with Mr. P.L. Chopra, Advocate for FCI.
Ms. Monica Garg, Advocate for UOI.
Ms. Geetanjali Mohan with Mr. Ashish Mohan, Advocate for R-3.

**CORAM:**
**HON'BLE DR. JUSTICE S. MURALIDHAR**

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in Digest? Yes

**: Dr. S. Muralidhar, J.**

1. These three writ petitions raise similar questions and are accordingly being disposed of by this common judgment.

2. Writ Petition (C) No. 1914 of 2004 is by M/s. Vaas Exports which is stated to be a partnership firm exporting different kinds of goods and, relevant to the present case, wheat in bulk quantities. The second writ petition W.P. (C) No. 5704 of 2004 is by the All India Grain Exporters Association which is a society registered under the Societies Registration Act, 1860. The petitioner in the third writ petition W.P. (C) No. 3606 of 2004 is the All India Chamber of Commerce & Industries which is again a society registered under the Societies Registration Act and the members of which include those carrying on the business as agents for import and export of all kinds of goods and articles.

3. The three petitions make a common grievance against the Food Corporation of India ('FCI'), a respondent in each of the petitions, for unilaterally increasing the prices of wheat and rice and making the increased price payable at the time of the delivery of the stocks irrespective of the fact that the contracts for lifting the stocks at a lower price had already been entered into with the buyers and the entire sale consideration had also been deposited previous to that date. It is claimed that based on such contracts, the buyers had already entered into further contracts with foreign buyers and not

being able to rescind those contracts, they had to incur huge losses. Accordingly, it is contended that the unilateral revision of the price at the time of delivery, is arbitrary and violation of petitioners' rights under Article 14, 19 (1) (g) and 21 of the Constitution of India.

***Background Facts***

4. FCI is a statutory corporation established under the Food Corporations Act, 1964 ('FC Act'). It has been entrusted the task of procuring stocks of food grains from farmers in India, storing them for domestic market as well for exports. These activities of FCI are controlled by guidelines issued from time to time by the Ministry of Consumer Affairs, Food and Public Distribution, Department of Food and Public Distribution, Union of India, which is the Respondent no.1 in these petitions. FCI has been designated as a "state-canalizing agency" dealing in all types of food grains including wheat and rice. It is stated that till February 2004 the FCI was a monopolistic entity engaged in the business of procuring and supplying all kinds of food grains. In February 2004 the Respondent No.1 had allowed private exporters to procure wheat and rice from the open market. Till then the exporters were completely dependent on the FCI for the procurement of rice and wheat for exports. These petitions concern the period prior to February 2004.

5. Sometime in the year 2000 the FCI was faced with a huge surplus stock of rice and wheat and was incurring a loss in the range of Rs.2500 per metric ton per annum towards storage, interest handling costs etc. A policy decision was taken by the FCI in January 2001 with the prior approval of the Union of India in terms of Section 13 (2) (c) of the FC Act to sell the surplus quantities of wheat and rice

for export through public sector undertakings such as Minerals and Metals Trading Corporation ('MMTC'), State Trading Corporation ('STC') and some private exporters. The FCI invited offers from intending exporters for purchase of rice and wheat lying in the various depots of the FCI all over the country excluding those in certain states like Himachal Pradesh, Jammu & Kashmir, Assam and Sikkim.

6. On March 13, 2001, the FCI revised its policy incorporating several safeguards to ensure that the stocks so supplied was not diverted into the domestic market. As per this policy, rice would be sold to the interested parties for export at a uniform price of Rs.675/- per quintal plus taxes as applicable “ex-FCI port godowns loaded into trucks.” In addition, the exporters were required to furnish an irrevocable, non-transferable bank guarantee, without recourse to the buyer at the rate of Rs.275/- per quintal for a period of one year calculated for a quantity proposed to be lifted by the exporters subject to the condition that the minimum stocks not less than 10,000 MT would be lifted by the exporters. Although the stock was to be supplied by the FCI “ex-FCI Port Godown”, the FCI did not prescribe any time limit for transportation of the stock to the port godown. However, Clauses (iv) and (v) of the revised policy read as under:

> “(iv) In case the parties lift the stock of rice from inland godown, they may be permitted for identifying the stock and lifting the same after making necessary payment at the District Office/Regional Office concerned. The requisite value be undertaken simultaneously and necessary action taken to satisfy for confirmation of the Bank Guarantee from the banker concerned.

(v) In case the stock is loaded into wagon in inland godown destined to a port destination where FCI port godown is situated, the RRs shall be endorsed in favour of the buyer for his holding of the wagons at the destination. However, it shall be the responsibility of the parties for arrangement of further movement to the port etc."

7. A further revised policy was brought out on 18.6.2001 for sale of stock of wheat by the FCI. This policy envisaged sale of wheat at Rs.4,300 per mt "ex port godown of FCI loaded into trucks" and stocks were to be lifted till 30.10.2001. It was stated that "stocks will be issued on pre-payment on 'as is where is basis' ex FCI godowns located in Port Towns loaded into trucks." On 20.6.2001 FCI introduced a detailed policy for rice which according to which the rates would be determined with reference to the date of remittance of payment for the lots. Separate prices were introduced for 'Par Boiled Rice' and 'Raw Rice' @ Rs.600/- per quintal and Rs.565/- per quintal respectively. The price so declared was for port destination where the FCI port godown was located i.e. "ex-FCI Port Godown loaded into trucks". The delivery would be given to the exporter by endorsing the railway receipt and the exporters were expected to take the delivery of the cargo at the port station.

8. On 3.12.2001 the Respondent No.2 issued a circular clarifying that it was the responsibility of the FCI to deliver the stocks of rice or wheat at the port godown and even the demurrage charges would be the responsibility of the FCI. It was stated that "freight" between the depots and port town would be on FCI's account and therefore, there would be no requirement of deposit of the rail freight by the party in

advance.

9. It is stated that on the basis of the above circulars, the MMTC and STC entered into contracts with foreign buyers. It is stated by M/s. Vaas Exports that MMTC entered into a sale contract with M/s. Crossland Marketing (2000) Pte. Ltd., Singapore, for bulk quantities of wheat. Clause 7 of that contract mandated that the quantity and quality shall be final and binding on the parties at the load port as certified by M/s. Vaas Exports, the inspection agency appointed by the buyer.

10. It is stated that the above policy circulars did not envisage any escalation in prices. All that was mentioned was that the rates applicable would be those prevalent on the date of remittance. Circular dated 16.12.2002 required the stocks to be lifted within thirty days from the quarter in which the circular was issued. It was stated that if the stocks so not lifted the increased price for the next quarter would be applicable. On 8.4.2003 another circular was issued by the FCI in which it was mentioned that the Ministry had not agreed with the proposal by the FCI that the price revision should not be insisted upon. Accordingly, it was directed by the FCI that stocks lifted beyond 30 days should be released only after recovering the differential amount. This was followed by circulars dated 9.6.2003 and 13.6.2003 in which it was insisted that the release orders would be issued for lifting of stocks at the effective export price that would be applicable on the date of the lifting of the stocks. This was followed by another circular dated 11.8.2003 in which it is stated that "the price prevailing at the time of lifting will be applicable to all pending release orders/allocations." It was directed that the backlog of release orders had to be first cleared and till such time the road

movement of stocks for the purpose of exports of wheat should be immediately stopped.

11. It is stated that the exporters were unable to lift the stocks from the port godowns of FCI for the simple reason that the FCI was unable to transport the stock to these port godowns. This was attributable to the shortage of rail rakes. A reference is made to a Railway circular dated 11.12.2002 according to which the export intend offered by the exporters was to be accompanied by documents verified by the FCI and accompanied by the FCI release order.

***Submissions of the Petitioners***

12. Mr. P.Sureshan and Mr. Mark D'Souza, Advocates appeared on behalf of the petitioners. According to them, the cumulative effect of these circulars was that the buyers were faced with the prospect of having to pay higher prices at the time of delivery of stocks, a situation not anticipated when they entered into the contract with the FCI. This was compounded by the delayed deliveries on account of non-availability of rail rakes. By stipulating that the rate at which payment had to be made would be that prevalent on the date of the lifting of stocks, the buyers had to inevitably incur losses. At the same time they could not have rescinded the contracts they had entered into with foreign buyers except at the risk of running up claims for huge damages. It is contended that terms and conditions of the contract could have been altered only by mutual consent under Section 62 of the Indian Contract Act, 1872 and that the payment of differential/increased amount cannot be treated as a novation of the contract as the same was made under duress. It is contended that the “arbitrary increase in prices should not be allowed to stand on

account of payments made by the petitioner in view of the severe economic duress posed by the circumstances and the lack of bargaining power." Accordingly, in these petitions, a declaration is sought that the circulars issued by the FCI between January and August 2003 unilaterally increasing the price are illegal and arbitrary. A challenge is also made to the circulars issued by the Railways to the extent that the liability to pay the freight charges was shifted to the exporters. A mandamus is sought to the respondents to refund the excess amount paid by the exporters.

13. The petitioners assert locus standi in their representative capacity since the exporters were the members of the petitioner associations. As regards Vaas Exports it is claimed that as a certifying agency it was indirectly and adversely affected as a result of the escalation in the prices. Reliance is placed on the decision in ***Tashi Delek Gaming Solutions Limited v. State of Karnataka*** (2006) 1SCC 442, in which the right of an agent to independently pursue an action was recognised. It was then contended that FCI as a state undertaking was expected to act reasonably even in the realm of contract. Reliance was placed on the decision of the Full Bench of the Madras High Court in ***Aluminium Industries Limited v. Minerals and Metals Trading Corporation of India Limited*** AIR 1998 Madras 239. The petitioners invoke the doctrine of legitimate expectation which was explained by the Hon'ble Supreme Court in ***National Buildings Construction Corporation v. S. Raghunathan*** (1998) 7 SCC 66. Referring to the decisions of the Hon'ble Supreme Court in ***State of Orissa v. Mangalam Timber Products Ltd.*** (2004) 1 SCC 139 and ***Ashoka Smokeless Coal Industries Ltd. v. Union of India*** (2007) 2 SCC 640, the petitioners claim that the principles of promissory

estoppel would also be available to be invoked particularly since the exporters have altered their position by relying on the contract with the FCI and have in turn entered into contracts with the foreign buyers. The petitioners present charts to show the extent of losses likely to have been suffered by the exporters on account of the revision in prices.

***Submissions of the Respondents***

14. The respondents were represented by Mr. Amarendra Sharan, Additional Solicitor General and Ms. Monica Garg, Advocate. On behalf of the respondents it is first contended that the petitioners lack locus standi to file these petitions. In the case of M/s. Vaas Exports, it is pointed out that they were only a certifying agency of M/s. Crossland Marketing (2000) Pte. Limited, the buyer in relation to MMTC. Mr. Sharan pointed out that the buyer in the case of M/s. Vaas Exports was M/s. Crossland Marketing (2000) Pte. Limited, Singapore had itself filed a Writ Petition being W.P.(C) No 19752 of 2004 in this Court which stood dismissed by a learned Single Judge on 15.12.2004 on the ground that the matter was one of enforcement of contractual rights between the said M/s. Crossland Marketing (2000) Pte. Limited and MMTC and in view of clause 21 of the Contract which was a "Special Clause". It was held that in view of this clause, "the petitioner cannot have any grievance or seek direction against the Government of India." This order of the learned Single Judge was affirmed by the Division Bench of its order dated 11.2.2005 in L.P.A. No.386 of 2005.

15. Mr.Sharan submits that none of the petitioners had themselves entered into contracts with the FCI and therefore there was no privity

of contract. The exporters who had entered into the contract with FCI had not come forward to file these petitions. Either in the petition filed by the All India Grain Exporters Association or in the petition filed by All India Chamber of Commerce and Industries, there is no indication as to who the exporters whom they represent are. The address given in the petition by All India Chamber of Commerce and Industries is somewhere in Tuticorin, Tamil Nadu. Exporters from Tuticorin represented by a Member of Parliament had already filed a writ petition in the Madras High Court which was pending there. Mr.Sharan further points out that if the petitioners are complaining of breach of contract by the FCI then the appropriate remedy was to file a suit for damages. According to him the claim concerning delayed delivery on account of non-availability of rakes cannot be decided in these present writ petitions. These were supervening impossibility resulting in frustration of the contract of which the suit for damages was the only remedy.

16. On merits, it is stated that prices are fixed on the recommendation of the High Level Committee and therefore, there is nothing arbitrary in the exercise. It is submitted that on account of the fluctuation in the price depending on the market situation, it is only fair that the price prevalent on the date of lifting of stocks is charged. It is submitted that even if the payment is made earlier to the date of lifting, the exact quantity by weight can be ascertained only at the time of delivery. Therefore, stipulating that requiring payment at the rate prevalent on the date of delivery is consistent with the contract. Given that the time the price revision is announced in advance and the buyer is given thirty days time to shift the stocks and the stocks could not be held indefinitely in the ex-godowns of FCI it is reasonable

to charge the prices as on the date of delivery.

17. The contracts were of a short-term duration and since stocks were to be lifted within a stipulated time, the power of the FCI to revise prices was implicit in the contract itself. It was in the interests of exporters themselves to ensure the timely lifting of the stocks and the FCI was only too eager to give delivery of the stocks given the fact that the stocks were perishable and there was a problem of lack of storage space and mounting demurrage. He refers to Clause 8 of the contract whereby "the FCI reserves the right to accept or reject any or all offers and/or withdraw any quantity from the sale without assigning any reasons whatsoever." He submits that in the facts of the present cases there was no occasion to invoke the doctrines of legitimate or promissory estoppel.

***Issues for determination***

18. The issues that arise for consideration in these petitions are:

(a) Do the petitioners lack the locus standi to pursue these petitions;

(b) Do the petitions raise questions of contractual liability unenforceable by way of writ petitions under Article 226 of the Constitution; and

(c) Assuming that these writ petitions are maintainable, have the petitioners made out a case for interference on the ground of arbitrariness tested on the doctrines of promissory estoppel or legitimate expectation?

***Issue (a): Locus standi***

19. There are two limbs of arguments of maintainability of these

petitions. First, it is contended by the respondent FCI that none of these petitioners is a directly affected party and they have no privity of contract with the FCI. The second, peculiar to the petition by Vaas Exports is that in respect of the very same transaction involving Vaas Exports, the buyer M/s. Crossland Marketing (2000) Pte. Limited, Singapore had already filed a petition which was dismissed by this Court.

20. In the case of Vaas Exports, it is correct that that M/s. Crossland Marketing (2000) Pte. Ltd. itself filed a separate writ petition being W.P.(C) No. 19752 of 2004 which was dismissed on the ground of maintainability by the learned Single Judge on 15.12.2004. The Division Bench of this Court on 11.2.2005 affirmed this order. The respondents are justified in contending that as far as Vaas Exports is concerned, the dismissal of the writ petition filed by the Crossland Marketing, the buyer would come in the way of entertaining a similar plea by the certifying agent of the buyer. In any event MMTC the exporter which had entered into a contract with the Crossland Marketing had not come forward with any grievance. The respondents are right that the impact of the price revision on Vaas Exports is remote and that it lacks locus standi to pursue these proceedings.

21. As regards the judgment of ***Tashi Delek Gaming Solutions Limited*** (supra), the said judgment was rendered in the context of challenge to a prohibition imposed on lotteries in the State of Karnataka. The lottery agents had themselves challenged the said prohibition in the High Court. A preliminary objection was raised to the maintainability of the petitions by the agents. It was held that by

virtue of the statutory provision, viz., Section 4 (c) of the Lotteries (Regulation) Act, 1998, which envisages the appointment of agents the agents could independently enforce their right to carry on business. However that it not the situation here. FCI had indeed no privity of contract with Vaas Exports. There is no enforceable right for which Vaas Exports can file the writ petition. The decision in ***Tashi Delek Gaming Solutions Limited*** (supra) will not have any application to the facts of the instant case.

22. As regards the other two writ petitions these are associations of which the exporters may be members. While in that capacity the petitioners may legitimately advance the cause of their members, the petitioners must disclose the names of the persons they seek to represent, the exact nature of the transactions and the resultant grievance of each such person. In the absence of such particulars, it would not be possible for the Court to ascertain the nature of the grievance that is sought to be ventilated. To that extent, the respondent FCI is justified in its objections to the maintainability of these petitions by the All India Grain Exporters Association and All India Chamber of Commerce & Industries. Issue (a) is, accordingly, answered. However, since the submissions of counsel have been heard at length, the petitions are not being dismissed on the ground of lack of locus standi.

***Issue (b): Can a contractual liability be enforced in writ petitions under Article 226?***

23. The petitioners seek a declaration from this Court that the circulars issued by the FCI revising the prices for wheat and rice were impermissible under the terms of the contract and are accordingly

arbitrary, unreasonable and in violation of the rights of the exporters under Articles 14, 19(1)(g) and 21 of the Constitution of India. The facts narrated above indicate that what was stipulated in the particular clauses of the contract. The FCI had agreed to supply to the buyers the contracted quantities of rice or wheat as the case may be at certain agreed price at the port godown. The contention by the petitioners on behalf of the exporters is that there was no clause in the contract permitting price escalation. The contention of the FCI on the other hand is that such a clause implicit in the nature of the contract itself.

24. To the Court it appears that this dispute requires interpretation of the clauses of the contract leading to a determination of an enforceable contractual liability. This has to be preceded by a determination that there has been a breach of contract by the FCI. Even if there is a determination of breach and the affixing of liability, the consequent reliefs by way of damages will involve a further determination as to the quantum of losses suffered by each of the exporters. The charts depicting the losses likely to have been suffered by the exporters only serve to remind that each of the contracts with the exporters would involve disputed questions of fact as well as the interpretation of the documents for which evidence would have been led. For all the above steps, the present proceedings under Article 226 are wholly inappropriate. The objection of the respondents to the maintainability to these petitions on the ground that they involve enforcement of a contractual liability is, therefore, sustained. Issue (b) is answered accordingly.

***Issue (c): Are the price revisions arbitrary or unreasonable?***

25. The scope of the powers of the writ court under Article 226 is fairly well settled in a large number of decisions. The scope is extremely limited in the realm of price revision. As regards the question whether the FCI had the power to revise the price, it requires to be noticed that there is no specific clause that prohibits the FCI from revising the prices. It is not possible to hold, on a plain reading of the contract, that the price was intended to be fixed for all times to come.

26. If indeed the FCI could revise the price the other question that arises is whether the price revision was irrational or excessive so as to be termed arbitrary. Here, it must be immediately conceded that the Court does not possess the expertise to determine if a particular price is a fair one or not. At best the Court can ask if a reasonable procedure has been followed in fixing the price and if all relevant factors have been accounted for in performing that exercise. The price revision has been undertaken on the recommendation of the High Power Committee. It was not suggested that this expert body lacked the expertise or had acted arbitrarily by ignoring relevant materials in fixing the price. In the circumstances, this Court is unable to come to the conclusion that the revision of prices by the FCI in the instant case was either arbitrary or unreasonable.

27. In the ***Aluminium Industries Case*** (supra), the Full Bench of the Madras High Court was dealing with a case of retrospective operation of price revision. Although those cases were also in the realm of contract, an important distinguishing feature is noted in para 30 of the judgment that the respondents raised no objection as to maintainability on that ground. However, as already noticed, the respondents have raised this very objection. Moreover in the Madras

case, it was noted that there was no dispute over facts, whereas that is not the position here.

***Legitimate expectation and promissory estoppel***

28. The petitioners invoke the doctrine of legitimate expectation and promissory estoppel to argue that the exporters were taken by surprise at the price revision and by then they had already entered into further contracts with foreign buyers thus altering their position.

29. The doctrine of legitimate expectation has been explained by the Hon'ble Supreme Court in ***National Buildings Construction Corporation v. S. Raghunathan*** (supra) and further in ***Bannari Amman Sugars Ltd. vs. CTO*** (2005) 1 SCC 625 and ***Kuldeep Singh vs. Govt. of NCT of Delhi*** JT 2006 (6) SC 199. In ***Punjab Communications Ltd vs. Union of India and Others*** (1999) 4 SCC 727 the Court also considered the doctrine in the context of the principle of reasonableness first enunciated in ***Associated Provincial Picture Houses Limited v. Wednesbury Corporation*** [1948] 1 KB 223, now generally known as ***Wednesbury*** principles. The Court then proceeded to explain as under (SCC p. 747):

> "37. The above survey of cases shows that the doctrine of legitimate expectation in the substantive sense has been accepted as part of our law and that the decision maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or past conduct unless some overriding public interest comes in the way. The judgment in ***Raghunathan's*** case requires that reliance must have been placed on the said representation and the representee must have thereby suffered detriment.
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> 38. The more important aspect, in our opinion, is whether the decision maker can sustain the change in policy by resort to ***Wednesbury*** principles of rationality or

> whether the Court can go into the question whether decision maker has properly balanced the legitimate expectation as against the need for a change? In the latter case the Court would obviously be able to go into the proportionality of the change in the policy."

Ultimately the Court concluded that in the context of a change in policy (page 749 SCC):

> "The legitimate substantive expectation merely permits the Court to find out if the change in policy, which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made."

30. In ***Raghunathan's*** case, the Hon'ble Supreme Court observed (SCC p. 79):

> "the question whether the expectation and the claim is reasonable or legitimate is a question of fact in each case. It was also observed that this question had to be determined not according to the claimant's perception but in larger public interest."

31. Turning to the case on hand, it requires to be noticed first that the contract envisaged delivery at the godown and payment had to be made at that point when delivery would be taken. So the price payable would have to be for stocks ultimately found fit for export and to that extent the exact price to be paid was not certain. Secondly, given the fact that the delivery had to be taken of the stock purchased within a fixed time, it can hardly be expected that the prices would not fluctuate. The phenomenon of price fluctuation in markets is hardly unknown. It ought to be anticipated by the buyers and the sellers. Its volatility depends on a variety of factors including the nature of the product. The supply and demand economics involves an element of

risk for buyers and sellers. They enter the market fully alive to these risks. The applicability of the doctrines of legitimate expectation or promissory estoppel will have to be examined in the above context. In the considered view of this Court, the said doctrine cannot possibly be invoked by the petitioners here.

32. As regards the invocation of the doctrine of promissory estoppel, the reliance on the ***Manglam Timber*** decision is misplaced. The only similarity in facts is that the price revision there was also to apply from a retrospective date. An important distinction however was that the price increase there could not be passed on to the buyers as they were indeterminate and innumerable. That is not the situation here where individual contracts with known buyers have been entered into. The losses, if any, in the instant case are quantifiable and to the extent permissible in law, also recoverable. As regards the judgment in ***Ashoka Smokeless*** (supra), the petitioners there were the auction bidders themselves who had approached the Court questioning the e-auction of tenders. The question involved there was not one of revision of prices alone but also the procedure adopted. Those facts are clearly distinguishable in their application to the instant case.

33. For all the above reasons, it is held that no ground has been made out in the three writ petitions for interference by this Court. The petitions are dismissed with costs of Rs.5,000 each payable by the petitioners to each of the respondents i.e. Union of India and Food Corporation of India within a period of four weeks from today.

May 18, 2007 S. Muralidhar, J.
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